the said Regulations No. 66/48, which offence is punishable under s. 17(1) of the Food Control Proclamation No. 10/45."

I do not propose to discuss the wording of that charge except to observe that had the prosecuting officer and the Magistrate given heed to the advice I have frequently given in the past to make some attempt to frame charges in accordance with the wording of the statutory provision which is alleged to have been contravened they would have realised that the case presented difficulties of which they seem to have been completely oblivious.

In general terms the Ration Documents Regulations would seem to provide for regulating the retail sale of certain foodstuffs, which nowadays in practice I am told means certain types of rice, by means of a system of ration cards. By Regulation 4 rationed food may be obtained and supplied "only by means of a ration document available for lawful use and lawfully used." This somewhat cryptic provision is to some extent explained by the terms of Regulation 5 which reads as follows:—

"A ration document shall be available for lawful use only—

(i) when retained or used by or on behalf of the person to whom it is issued and for the purpose of obtaining rationed food for him or on his behalf: provided that it may not be retained by a retailer except with the written consent of the Controller of Supplies;

(ii) while such person is living and is in the Federation."

By Regulation 7 every ration document remains the property of the Food Controller "but the person to whom a ration document is issued shall be entitled to its custody and shall be responsible for its safe custody." The only other Regulation relevant to the present case, and it is the one under which the appellant has been convicted, is 15(d) which reads as follows:—

"15. A person shall not:

.....

(d) retain any such ration document when he has no right to retain it or fail to comply with any directions with regard thereto;

....."

The word "such" in this last Regulation is pure surplusage and can be safely disregarded.

The interpretation placed upon the Regulations quoted by the Prosecution and which was accepted by the Magistrate, although he does not seem to have given the matter much consideration, is that if a retailer retains in his possession ration cards belonging to his customers without the written consent of the Controller of Supplies he is guilty of an offence under Regulation 15(d) which is punishable under Section 17 of the original Proclamation.

This may or may not have been the intention of the functionary who made the Regulations but if it was then in my judgment he has failed to express it. By Regulation 7 a person to whom a ration card is issued is entitled to its custody and is responsible for its safe custody but there is nothing in that Regulation which prohibits his entrusting its custody to another person. That being so, if the holder does entrust the custody of the card to another person I fail to see that that other person has "no right" to retain it so long as he, retains it with the full knowledge and consent of the holder. And it does not seem to me to affect the issue whether the person who is entrusted with the custody of the card is a retailer or a member of the holder's family or anybody else. It is true that Regulation 5 says that if the person who retains it is a retailer, and if he retains it without the written consent of the Controller of Supplies, the card is "not available for lawful use." That may or may not mean that if any use is made of the card when in such custody such use is unlawful and it may or not be that the use of a card which is thereby made unlawful constitutes some sort of offence. It is clear, however, that bare retention of ration cards by a retailer with the knowledge and consent of the holders is no offence under the Regulations and that in the present case the appellant has been convicted of something which is not an offence known to the law.

Before departing from the case, I would repeat with regard to the wording of Regulations 5 and 15(d) certain words which I used with reference to Regulation 14(1) as long ago as December, 1948, (Perak Criminal Appeal No. 78 of 1948) words, I would add, that seem to have fallen on deaf ears. What I said was this:—

"I fail to see that these words create any offence. I fail, moreover, to see how they could even be supposed to create any offence save on the principle still fortunately alien to any system of law based on the English Law that anything the subject does which is not expressly authorised by the terms of some statute constitutes an offence. If the Legislature wishes that principle to be applied to the construction of statutes it should say so and say so in terms. But until it does say so, the subject should not be called upon, as in this case, to defend himself against charges which can only be made out by its importation."

The appeal is allowed and the conviction is set aside. There will be an order for the refund of the fine if it has been paid.

Appeal allowed.

Solicitors for the appellant: *Leong Yew Koh & Co.*

SADHU SINGH v. SELLATHURAI

[A. C. J. (Thomson J.) April 1, 1955]

[Ipoh — Civil Appeal No. 2 of 1955]

Moneylenders Ordinance, 1951, ss. 2(c), 3, 5 and 15 — Moneylender unlicensed at time of making loan — Whether debarred from enforcing contract for repayment.

In this case the appellant sued the respondent for $2,000 on a cheque, given to him by the latter by way

of acknowledgement and security for a loan, which was subsequently dishonoured. The respondent pleaded that at the time of the transaction the appellant was an unlicensed moneylender and therefore debarred by reason of s. 15 of the Ordinance from enforcing the contract for repayment. The learned President held that the presumption contained in s. 3 of the Ordinance arose against the appellant and as he had failed to rebut the presumption judgment was given for the respondent.

It was contended for the appellant that in order to establish that a person was carrying on the business of moneylending it was necessary to prove some degree of system and continuity in his moneylending transactions. As there was no evidence that the appellant had lent money to anybody else except the respondent in 1952 and 1953 it was argued that the learned President should have held that he was not carrying on the business of moneylending.

Held: (1) in the Federation and Singapore once a single moneylending transaction was proved against a person then the onus of proving that he was not carrying on the business of moneylending passed to him; (2) in this case the learned President did not come to a wrong conclusion in holding that the appellant had failed to discharge the onus which rested upon him under s. 3 of the Ordinance.

Cases referred to:—

(1) *Esmail Sahib v. Noordin* (1951) M.L.J. 98.
(2) *Newton v. Pyke* (1908) 25 T.L.R. 127.
(3) *Kirkwood v. Gadd* (1910) A.C. 422, 431.
(4) *Newman v. Oughton* (1911) 1 K.B. 792, 795, 796.

CIVIL APPEAL.

N. Sharma for the appellant.

K. C. Chan for the respondent.

Cur. Adv. Vult.

Thomson J. : — This is an appeal from a decision of the Sessions Court at Teluk Anson.

The appellant who is now a licensed moneylender but who did not in 1953 hold a licence under the Moneylenders Ordinance, 1951, lent to the respondent on 17th July, 1953, a sum of $2,000. By way of acknowledgment and security the respondent gave him a cheque for $2,000 drawn on the Oversea Chinese Bank at Teluk Anson. That cheque was originally dated 17th July, 1953, the date of the loan, but the date was subsequently altered in circumstances which are of no great importance to 17th November, 1953. In due course, the cheque was presented but dishonoured. And it is common ground that no part of the loan of $2,000 has been repaid although certain payments have been made apparently by way of interest.

On 24th June, 1954, the appellant commenced the present proceedings in which he sued for $2,000 on the dishonoured cheque. In his statement of Defence the respondent pleaded that at the time of the transaction the plaintiff was an unlicensed moneylender.

At the trial there was no question as to the debt. It was admitted that the respondent had borrowed the money and had given the cheque for it and it was admitted that no part of the money had been repaid. There was, however, considerable controversy as to the circumstances and conditions of the loan. The appellant's contention was that the loan was not made in consideration of any fixed amount of interest but that it was an advance to assist the respondent in financing a Public Works Department contract which he held and that he was to be remunerated by a share in the profits of that contract when they were ascertained. The respondent, on the other hand, said interest was to be paid on the loan at a fixed rate of 5% (presumably, though he did not say so, per month) and that certain payments on account of interest had in fact been made. In the event, the learned President accepted the respondent's version of the transaction and his decision on the point has not been, nor, in my opinion, can it be, seriously questioned.

Having arrived at that stage the question then arose as to whether at the time the loan was made the appellant was an unlicensed moneylender and therefore debarred by reason of section 15 of the Moneylenders Ordinance from enforcing the contract for the repayment of the money.

The learned President rightly directed himself that once he had accepted the respondent's version of the transaction the presumption contained in section 3 of the Moneylenders Ordinance arose against the appellant and he proceeded to hold that the appellant had failed to rebut that presumption. He accordingly gave judgment for the respondent.

Against that decision the appellant has now appealed.

At this stage it will be convenient to refer to the relevant provisions of the Moneylenders Ordinance. A "moneylender" is defined in section 2 and that definition includes every person who carries on the business of moneylending subject to a number of exceptions the only one of which at all relevant to the present case being (c) which exempts any person *bona fide* carrying on any business not having for its own primary objects the lending of money in the course of which and for the purposes whereof he lends money. Section 3 provides that subject to the exceptions contained in the definition clause any person who lends money in consideration of a larger sum being repaid shall be presumed until the contrary be proved to be a moneylender. Section 5 requires moneylenders to take out annual licences and section 15 provides :—

"No contract for the repayment of money lent after the coming into force of this Ordinance by an unlicensed moneylender shall be enforceable."

The Ordinance came into force on 31st March, 1952, and in the circumstances of the present case that date is important.

Had the learned President accepted the appellant's version of the transaction it is possible (I express no

opinion on the point) that the appellant might have come within the scope of exception (c) to the definition of moneylender which has been mentioned. As, however, the respondent's version was accepted that question did not arise. The respondent's version, once it was accepted, established that the money had been lent in consideration of a larger sum being repaid and so raised against the appellant by reason of section 3 the presumption that when the money was lent he was a moneylender.

Mr. Narain Sharma for the appellant has contended that the President was wrong in holding that the appellant had failed to rebut that presumption. He pointed out that the question was not one of whether the appellant had lent money but was one of whether at the time when the money was lent he was carrying on the business of moneylending. He said there was no evidence that the appellant had lent money to anybody except the respondent in 1952 or 1953 and argued that on that the President should have held that he was not carrying on the business of lending money. He cited the Singapore case of *Esmail Sahib v. Noordin*[1] and the English cases of *Newton v. Pyke*[2], *Kirkwood v. Gadd*[3] and *Newman v. Oughton*[4], and on the authority of these cases he submitted that in order to establish that a person is carrying on the business of moneylending it is not sufficient to shew that he has occasionally lent money at a remunerative rate of interest but that it is necessary to prove some degree of system and continuity in his moneylending transactions. I accept that as a correct statement of the law though in its application it has to be remembered that here and in Singapore once a single moneylending transaction is proved against a party then the onus of proving that he is not carrying on the business of moneylending passes to him. In this connection it is to be observed in considering the way in which the English Courts have applied the law to the facts of individual cases that the English Moneylenders Act of 1900 contains no 'reversal of onus' provision similar to our section 3.

I am impressed with the strength of Mr. Sharma's argument which, indeed, if the premises upon which it is based were sound would be virtually unanswerable. To my mind, however, it overlooks certain very material portions of the evidence. The appellant himself admitted that before 1952 he carried on business as a moneylender. It was proved that on at least one occasion in 1953 he lent money at interest. He admitted that he had a moneylender's licence for 1954 and at the trial he described himself as a moneylender. To that is to be added the consideration that the Moneylenders Ordinance came into force on 31st March, 1952, and that the pre-existing legislation (Cap. 63) contained no provisions relating to the licensing of moneylenders.

The whole question to be decided was a question of fact (See *Kirkwood v. Gadd*[3], *supra*) and there was evidence on both sides. By reason of the provisions of section 3 of the Ordinance the appellant had to satisfy the Court that the balance of reasonable probability was that during the year 1953 he was not carrying on the business of moneylending and his admissions that he was carrying on that business prior to 1952 when for the first time a licence became necessary to carry it on and that he had taken out a licence in 1954 were relevant and admissible against him. The only explanation he gave of the alleged lapse of his activities in 1952 and 1953 was that he had no money in 1952. That may well be but he clearly had money in 1953 for he lent it to the respondent.

On the whole of the evidence as it stands I am not prepared to say that the President came to a wrong conclusion in holding that the appellant had failed to discharge the onus which rested upon him. I am fortified in that view by the consideration that a certain element of the credibility to be attached to the appellant's evidence was involved and that on that point the President has enjoyed the advantage of necessity denied to me of having heard him and seen him.

I have some small sympathy with the appellant in losing his money possibly as a result of his failure to appreciate the effect of recent legislation which effected drastic changes in the law. Also I do not think the respondent is a person whom the legislature sought to protect. He has had the money for the purposes of his business and he has deliberately pleaded the Moneylenders Ordinance not to escape from the burden of excessive interest but to avoid paying the money back. At the time he borrowed the money he may not have known that the appellant had not taken out a moneylender's licence but he certainly knew that he was a moneylender. Be that as it may hard cases make bad law and the President would not have been justified (nor would I) in flying in the face of provisions of the Ordinance.

The appeal is dismissed with costs.

Appeal dismissed.

J. S. DRINKHALL v. NAM HUE MOTOR HIRING

[O. C. J. (Murray-Aynsley C.J.) June 23, 1955]
[Singapore — Suit No. 148 of 1951]

Limitation — Claim for personal injuries limited to one year period — Whether subsequent amendment of the law to period of 3 years revives writ already issued.

An accident took place on February 4, 1950 in which the plaintiff in this case sustained personal injuries. A writ against the defendant was issued on March 1, 1951.